IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 541 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIST.DEVE.OFFICER & ANR

Versus

RAMESHBHAI GANDABHAI

Appearance:

1. Special Civil Application No. 541 of 1994

MR DD VYAS for Petitioner No. 1-2

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 16/01/2004

ORAL JUDGEMENT

Heard learned Senior Advocate Mr. D.D. Vyas for the petitioner and Mrs. D.T. Shah for the respondent

workman. By way of this petition under Article 227 of the Constitution of India, the petitioners have challenged the order of the Labour Court, Surendranagar in Recovery Application NO. 30 of 1991 dated 24th May, 1993 wherein the labour court held on the basis of the GR dated 17.10.1988 of the Government of Gujarat that an amount of Rs.3068.00 is falling due in favour of the workman Rameshbhai Gandabhai from the opponent i.e. petitioners for a period from 1.4.1985 to 31.12.1989.

Learned Senior Advocate Mr.D.D. Vyas appearing for the petitioner has submitted that the said GR dated 17.10.1988 is not applicable to the petitioners and, therefore, recovery is not maintainable. He also submitted that the recovery application was also not maintainable as it was requiring adjudication prior to the filing of the recovery application and in earlier reference no. 1728 of 1984, claim of back wages was foregone by the workman and only continuity of service was granted and therefore also, it was a question as to whether the petitioner has completed continuous service within the meaning of the GR dated 17.10.1988 or not and, therefore, the labour court ought not to have entertained the recovery application as there were no pre-existing rights in favour of the workman. He also submitted that the labour court has committed jurisdictional error in allowing the recovery application.

On the other hand, learned advocate Mrs. Shah appearing for the respondent workman has submitted that it was a difference of salary on the basis of the GR dated 17.10.1988 for which the workman was entitled as a matter of right and that was rightly granted by the labour court.

I have perused the entire order made by the labour court in the aforesaid recovery application. I have also considered the submissions made by the learned advocates for the parties. The question is that earlier, services of the respondent workman were terminated by the petitioner against which industrial dispute was raised by the workman which was referred to for adjudication and in the said reference NO. 1728 of 1984, the reinstatement was granted with continuity of service but without back wages for the intervening period. 253 days' continuous service was completed by the workman from 21st July, 1979 to 20th July, 1980 and in June, 1980, his services were terminated and thereafter, reinstatement with continuity of service was granted by the labour court in its award which has not been disturbed by the Higher Forum. Therefore, once the workman has been reinstated in

service in view of the award made by the labour court with continuity of service, then, his earlier services must be considered as continuous service and that was the reason why the labour court has considered the continuous service within the meaning of section 25-B of the ID Act, 1947 and accordingly the labour court applied the said GR which is also applicable to the District Panchayat as per the said Resolution. Therefore, recovery application was based upon the rights created under the said Government Resolution dated 17.10.1988 and that was a pre existing right and was rightly enforced by the labour court in favour of the workman. Therefore, considering the continuity of service the labour court granted difference of salary for a period from 1st April,1985 to 31st December, 1989 and only Rs.3068.00 has been granted. According to my opinion, for granting the said small amount of difference for the aforesaid period, the labour court has not committed any error calling for interference of this court while exercising the jurisdiction under Article 227 of the Constitution of India. Learned advocate Mr. Vyas has not been able to point out any infirmity and / or procedural irregularity committed by the labour court. Therefore, there is no substance in the petition and the same is therefore dismissed. Rule is discharged. Interim relief,if any, shall stand vacated with no order as to costs.

[H.K. Rathod,J.]